

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Jose E. Ortiz, :
Plaintiff, :
v. : Case No. 2:06-cv-562
Jim Karnes, et al., : JUDGE WATSON
Defendants. :

REPORT AND RECOMMENDATION

On April 23, 2009, defendants filed a motion to dismiss for failure to prosecute. When plaintiff did not timely responded, the Court directed him to do so. He has subsequently filed two separate responses to the motion, and has also filed a pretrial statement. For the following reasons, the Court will recommend denial of the motion to dismiss.

The sole foundation for the motion to dismiss is that, in the time period between the Court's denial of a motion to compel filed by plaintiff and the date of the motion, plaintiff had done no discovery. However, a party to a civil action is not obligated to pursue discovery. Plaintiff has not missed any deadlines, and he has filed a pretrial statement. Under those circumstances, there is no willful neglect of this case which would lead to a dismissal. Consequently, it is recommended that the motion to dismiss (#27) be denied. The Court reminds the parties that, pursuant to the current scheduling order (#28), all discovery must be completed by August 30, 2009, and summary judgment motions are due by September 30, 2009.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within ten (10) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. Section 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge